

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

RED BARN MOTORS, INC., )  
PLATINUM MOTORS, INC., )  
MATTINGLY AUTO SALES, INC., )  
YOUNG EXECUTIVE MANAGEMENT & )  
CONSULTING SERVICES, INC., )  
Individually, and on behalf )  
of other members of the )  
general public similarly )  
situated, )  
Plaintiffs, )  
-v- ) Docket No.  
1:14-cv-01589-TWP-DKL  
COX ENTERPRISES, INC., ) Class Action  
COX AUTOMOTIVE, INC., )  
NEXTGEAR CAPITAL, INC. f/k/a )  
DEALER SERVICES CORPORATION, )  
successor by merger with )  
Manheim Automotive Financial )  
Services, Inc., and JOHN WICK, )  
Defendants. )

The deposition upon oral examination of **STUART LABAUVE**, a witness produced and sworn before me, Tami L. Scott, Notary Public in and for the County of Marion, State of Indiana, taken on behalf of the Plaintiffs at the offices of Bose, McKinney & Evans, 111 Monument Circle, Suite 2700, Indianapolis, Marion County, Indiana, on November 9, 2016, at 9:00 a.m., pursuant to the Federal Rules of Civil Procedure.

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1 A And who did you write down?

2 Q I'm not typing this. She is.

3 A I mean, I don't remember the time frame and exactly  
4 who we talked about and what and what conversations.

5 Q Well, we will just -- who did you discuss this with  
6 besides the lawyers, the lawsuit?

7 A I first heard about it from John Poteet. He gave me  
8 a copy of it from Louisiana's First Choice. And I  
9 don't think anything else was done until I got  
10 notice that it was ongoing from our corporate  
11 counsel, Gary Hoke.

12 Q When you did, when John -- did John give you a copy?

13 A Yes, sir.

14 Q That was at First Choice in Hammond?

15 A Yes, sir.

16 Q He gives you have a physical copy of the lawsuit.

17 You read it, obviously; correct?

18 A Correct.

19 Q He was sued at the time; correct?

20 A Yes, sir.

21 Q He was fired up?

22 A No, sir.

23 Q No, sir? You reviewed it, though?

24 A Yes, sir, I read it.

25 Q And obviously, you then took it to someone and said,

1           geez, back at the company, look at this?

2   A       No. I knew -- I mean, the company was obviously  
3           served, so I just kept it for my record in my  
4           office. The company knew about it.

5   Q       But the first time you heard about it was from John  
6           Poteet?

7   A       Yes, sir.

8   Q       No one from the company had said, oh, by the way --

9   A       No, sir.

10   Q      -- one of your accounts, Red Barn, has now sued us?

11   A       No, sir.

12   Q       You never discussed it with anyone in the company?

13   A       No, sir.

14   Q       Okay. Besides lawyers sitting here today, whatever  
15           date the date is, November 9, 2016, have you  
16           discussed the accusations of the Red Barn lawsuit  
17           with anyone in the company?

18   A       I mean, when they came up with the depositions, I  
19           let Troy know, and he said, "I've heard about the  
20           lawsuit."

21   Q       Okay. And what else did you all discuss?

22   A       Nothing. I mean, he knew about it. I told him I  
23           had to come up for depositions, and that was all  
24           that was said.

25   Q       Okay. Do you have any information that contradicts

1 Devon London's assertion that he confronted you  
2 about the interest payments?

3 A I said I don't recall. If there is something else  
4 that you have that shows that I did, I mean --

5 Q I'm asking you.

6 A I said I don't recall.

7 Q Have you reviewed your -- all of your notes either  
8 in Discover or WebFOCUS or whatever particular  
9 applications you have, in writing, digitally, have  
10 you reviewed those notes to see if any of that  
11 information shows your interactions with Devon  
12 London as made in the lawsuit?

13 A I --

14 Q One way or the other?

15 A I've reviewed the -- in Discover, I have collections  
16 management, and I read the lawsuit.

17 Q Did you find anything in any of the records on your  
18 side of the fence, so to speak, that show any  
19 meetings or conversations with Devon London?

20 A There were meetings with Devon when we were going  
21 through the default process.

22 Q Uh-huh. But before that?

23 A If there was an incident because of an audit that  
24 was, you know, left over, there would be records in  
25 there about that.

1 Q All right. Let me show you what is marked as  
2 Exhibit 17.

3 *(Plaintiffs' Deposition Exhibit 17 marked*  
4 *for identification.)*

5 Q For the record, this contains a Bates label of RB,  
6 R as in Red, B as in Barn, 2178, to and including  
7 2180. Okay? Do you recognize this to be a NextGear  
8 Receivable Detail Report?

9 A Yes, sir.

10 Q Is this something, obviously, that is generated by  
11 NextGear?

12 A Yes, sir.

13 Q And what business is listed on the upper left-hand  
14 corner?

15 A Red Barn Motors, Inc.

16 Q And what's the date of this report?

17 A Friday, April 26th, 2013.

18 Q Who was it requested by?

19 A Gary Hoke.

20 Q Who is Gary?

21 A He is an attorney for NextGear Capital.

22 Q Is this a report that was sent from NextGear to Red  
23 Barn?

24 A I don't know where it was sent.

25 Q If Red Barn is in possession of it, how would they

1           have received it?

2       A       I mean, it was sent to them. I don't know who --

3       Q       Right.

4       A       Gary pulled it. I don't know who got it from where.

5       Q       Okay. And turn to the second page, if you could.

6           I'm sorry, back on the first page, Customer Profile,  
7           it's got -- it contains the name Red Barn and its  
8           address; is that correct?

9       A       Yes, sir.

10      Q       Okay. And on the second page, what columns did  
11           NextGear list on this particular report?

12      A       We have the Floor Date, Days, Last Paid, VS for  
13           Vehicle Status, Vehicle Description, Color, VIN,  
14           Stock Number, Title Status, Due, Disbursement,  
15           Source, Original Amount, Principal Balance, One Day  
16           Balance, Fee, Interest, Insurance, Other, and Total.

17      Q       Okay. Let me show you Exhibit 18, and a copy for  
18           your counsel.

19                   *(Plaintiffs' Deposition Exhibit 18 marked*  
20                   *for identification.)*

21      Q       And for the record, this is four pages. This  
22           document marked as Exhibit 18 appears to have an NG  
23           number, I believe, but that is cut off, so I cannot  
24           read, unless anyone else in the room can help, the  
25           exact number.

1 A I don't see any on it.

2 MR. VINK: I don't see a number even on our  
3 copies.

4 MR. COMAN: Okay. I can show you this version,  
5 just for the record. If you see at the bottom, it's  
6 cut off. It appears to be an NG. If you think  
7 otherwise, let me know.

8 MR. VINK: It appears to be. It's hard to  
9 tell.

10 Q All right. But looking on the document itself, on  
11 the upper left-hand corner, is this a NextGear  
12 Capital document?

13 A Yes, sir.

14 Q You've seen this type of document before; correct?

15 A Yes, sir.

16 Q And which business is this for?

17 A Red Barn Motors, Inc.

18 Q And what's the date of this report, on the  
19 right-hand corner?

20 A Monday, March 18th, 2013.

21 Q Okay. If you look back at Exhibit 17 and 18, is  
22 this basically the same type of report for Red Barn,  
23 just on a different date?

24 A Yes, sir.

25 Q Okay. So this is a document that is generated by

1 NextGear; correct?

2 A Yes, sir.

3 Q And if you flip to the second page of this  
4 particular document, although part of this seems to  
5 be cut off -- actually, flip to the third page, if  
6 you could. Does this page contain the same types of  
7 information as Exhibit 17?

8 A Yes, sir.

9 Q Starting with Floorplan Date?

10 A Yes, sir.

11 Q And left to right; is that correct?

12 A Yes, sir.

13 Q Would Red Barn have access to this report?

14 A Yes, sir.

15 Q How is that?

16 A Through the virtual office that he is set up with,  
17 by using his dealer number or dealer name to sign  
18 in.

19 Q Where on either 17 or 18, those exhibits, is there  
20 any indication that shows when DSC paid the auction?

21 A In the Disbursement column.

22 Q Where is that?

23 A In the middle, D-I-S-B.

24 Q Okay. If we look on -- let's use Exhibit 17, and  
25 specifically, RB2178. If we look at that first



1 transaction, Stock Number, what, 383? Do you see  
2 that, Mr. LaBauve?

3 A Yes, sir.

4 Q What's it -- you said before Disbursement, D-I-S-B?

5 A Yes, sir.

6 Q What is that under -- I can't read that.

7 A It's an "S" for saying we paid the seller, which was  
8 the source, Oak View Auto Auction.

9 Q Right. When?

10 A It doesn't say that.

11 Q Okay. So this is Red Barn. Do all customer dealers  
12 have access to the same type of information we're  
13 looking at in 17 and 18?

14 A Yes, sir.

15 Q So as Red Barn or some other customer dealer looks  
16 at their account, whatever it is, on that date, this  
17 is the information that we will see, and the only  
18 indication that there's been a payment from DSC to  
19 the auction is not a date, but just a dollar sign?

20 A It's "S" for seller, or if it was something that we  
21 floored outside the auction, paid Red Barn in this  
22 case for it, it would say "B" for buyer.

23 Q Okay. But no date?

24 A No, sir.

25 Q So the customer dealer has no inclination or

1           indication that a floorplan date is different than  
2           the funding date; correct?

3       A       Correct.

4       Q       Now take a look at Exhibit 19. Copy for your  
5           counsel.

6                   *(Plaintiffs' Deposition Exhibit 19 marked*  
7                   *for identification.)*

8       Q       And as you review that document for the record, this  
9           is Bates labeled NGR000011, through and including  
10          NGR000033.

11      A       *(Witness reading document.)* Okay.

12      Q       This is a NextGear Capital document; correct?

13      A       Yes, sir.

14      Q       And is it listed underneath NextGear Capital,  
15          Business Red Barn Motors, Inc.?

16      A       Yes, sir.

17      Q       Is that their -- is that the account number next to  
18          it?

19      A       Their dealer number with NextGear.

20      Q       Fair enough. Does NextGear refer to this document  
21          as a flooring vehicle history report?

22      A       There is no title. It possibly is. I mean, I think  
23          this is the one that is used to show each piece of  
24          inventory that a dealer would have floored with  
25          the -- you see the Purchase Amount, Financed Amount,

1 Floor Fees, and Interest. A lot of times dealers  
2 will -- actually, this at the end of the year is  
3 for -- or at the end of a month for their tax  
4 purposes.

5 Q Dealers never got this, though; correct?

6 A They can request it.

7 Q Would this be available to them? Did they have  
8 access to this?

9 A I don't know if it's on their website or not.

10 Q Do you ever know and can you state for the record  
11 any particular dealer that requested and received  
12 this document from DSC and/or NextGear?

13 A I did one just earlier this month for Gonzalez  
14 Motors and Prestige of Baton Rouge. If a dealer  
15 calls, we can get it for them.

16 Q Prior to 2016?

17 A Anytime.

18 Q Anytime. Okay. Where on here is the disbursement  
19 date?

20 A I didn't see one on here.

21 Q Do you believe that this document was created for  
22 this litigation?

23 A No, sir.

24 Q Or this is --

25 A It's always been available.

1 Q It's always been available. To whom?

2 A To the dealer.

3 Q I'm the dealer; I'm looking at that. Strike that.

4 You're the dealer; you're looking at that.

5 A Uh-huh.

6 Q Where is the date of advance?

7 A Well, it would show the Unit Purchase Date and then  
8 the Floor Date.

9 Q Okay. And let's take, for instance, the first one,  
10 just at the top. Actually, flip over to the  
11 following page, the second page, which is NGR000012.  
12 Okay?

13 A Uh-huh.

14 Q About middle of the page, it has transaction -- I  
15 guess it's Stock Number 11. Do you see that?

16 A Yes, sir.

17 Q What's the Flooring Date? I'm sorry, what's the  
18 Unit Purchase Date?

19 A August 5th, 2011.

20 Q Okay. What's the Flooring Date?

21 A August 5th, 2011.

22 Q Same date?

23 A Yes, sir.

24 Q And those dates typically match; correct?

25 A Yes, sir.

1 Q Do you see that "Total for," quote, unquote, on the  
2 left-hand side where it says, if you scroll the  
3 left-hand side of the page, August 23, 2011? At the  
4 bottom, four rows down, let's say.

5 A Oh, yes, sir, I see that.

6 Q What's that date?

7 A The date on total for 8/23/2011.

8 Q That's the date of advance; correct?

9 A I don't know what that date is. It just says total  
10 for that date.

11 Q Why does it say "Total for"? What does that mean?

12 A I don't know, because there is nothing after it.

13 Q Have you ever seen a document like this that lists  
14 on the left-hand side or any side "Total for",  
15 quote, unquote?

16 A I mean, I don't know what that -- that someone -- I  
17 don't know what it is.

18 Q Right. And I appreciate that you don't know what it  
19 is. Have you ever seen it?

20 A No, sir.

21 Q If a customer for some reason has access to this and  
22 looks on the left-hand side and sees "Total for -  
23 August 23, 2011," is there any indication of what  
24 that date even stands for?

25 A Not according to what's on here on this document.